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## **On the Materiality of Law.**

### ***Spatial and Legal appropriations of the Lagos Setback.***

#### **Abstract:**

This paper provides an historical account of the governmental ambitions and unintended side-effects of a specific form of urban regulation in the city of Lagos, Nigeria. A counter-intuitive parable of 'corruption', it describes the perversion of this law's original rationale, as it is transformed and redirected to serve the declared and undeclared interests of a wide range of urban actors. This account is brought into dialogue with studies in Law and Geography studies – particularly the concept of 'seeing like a city' – that suggest we recognise such processes of transformation as politically ambivalent, and necessary to the openness and vitality of urban life. Drawing on research methods from the field of Infrastructure Studies, the paper contributes to these literatures by speculating on the particular 'actancy' of architecture in the construction and maintenance of this openness.

## Gunpowder and Thatch

*'Peaceful penetration is the uniform and unbroken course of the development of Lagos since its cession in 1861. No rising of the Natives and no punitive expeditions draw a red streak across its story of peace and trade'.* So begins Sir William Geary's 'Nigeria Under British Rule'<sup>1</sup>, though his account of the cession itself must admit to the occasional bloodstain or scorch-mark. Committed to establish the British Empire as an arena of free trade, and so to end slavery by either diplomacy or force, on Christmastide 1851 Lord Palmerston, the then Foreign Secretary, ordered that Lagos be reduced by bombardment from the HMS *Bloodhound* and *Teaser*. After 5 days of fighting, during which a rocket exploding in a magazine caused a fire that left most of the town destroyed, the local King was driven out, and replaced by a favourable alternative. For 10 years the port remained nominally independent. During this period the slave-trade with America was abolished, but development of commercial relations with Britain faltered. Correspondence that Geary draws upon attribute this to a lack of 'effective government', in particular surrounding the difficulty of defining and defending private property, a concept foreign to the indigenous culture.

On the 22<sup>nd</sup> of June 1861 Lagos was taken possession of as a British Dependency. Geary notes that 'no injustice' was done to the puppet King Docemo; he was offered a generous personal pension. This offer was delivered to him by HMS *Prometheus*, which escorted him to the British Consulate to complete the paperwork. Sir William does not comment as to whether Docemo was pleased with the proposal, but it seems he did not put up a fight; as recalled by Otonba Payne, who would go on to be Lagos's Chief Registrar, *"King Docemo and chiefs stood by the flag staff in front of the consulate and went through the ceremony of touching the rope, by which the British Ensign became unfurled while simultaneously the frigate thundered a Royal salute of 21 guns, while all the school children of Lagos then present sang the National Anthem"*<sup>2</sup>. Article 1 of the Treaty of Cession read:

*I, Docemo, do, with the consent and advice of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs, and successors forever, the port and Island of Lagos with all the rights, profits, territories, and appurtenances whatsoever thereunto belonging, and as well the profits and revenue as the direct, full, and absolute dominion and sovereignty of the said port, island, and premises, with all royalties thereof, freely, fully and entirely and absolutely.*<sup>3</sup>

Article 3 thought to add that Docemo's stamp on the treaty would be taken as proof that there were no other native claims on the land, and that Lagos was indeed his to give away. While Geary offers us this official story, other accounts include details he would omit. The *Anglo-African*, a Lagos newspaper, reported on September 12<sup>th</sup> 1863 Docemo proclaiming (in his native Yoruba) *"Mo ofi ilu me torreh..."* (*"I have not made a present of my town. Did I not in the government house... refuse to sign? Did I not refuse on board the Prometheus? At my palace did I not also refuse to sign?"*)<sup>4</sup>. This statement may not appear in the official chronicles, but it did garner official response. Governor Glover declared a state of emergency within 9 hours stating; *'Gentlemen, King Docemo has this day denied that he ever gave over his town to the Queen of England, thereby defying the Queen's supremacy over this her colony of Lagos. I hereby call on all loyal subjects of her majesty to be sworn in as Special Constables for the due assertion of Her Majesty's authority and the protection of life and property within her colony of Lagos'*<sup>5</sup>. This assertion of martial law led to the 'excitement of the 13<sup>th</sup>' in which the city was once again destroyed by fire-bombing. Docemo surrendered, was stripped of his pension, and fined £50 for the bother.

Absolute assertion of British Sovereignty did not end the challenges of colonisation, though, chief amongst them remaining the issue of private property development. In Yoruba culture land was understood to be inalienable, held in trust by networks of family, clan and royal associations, managed by an administrative class of 'White-Cap Chiefs'. Ordinance 9 of 1863 – one of the first laws passed by the new administration – dismantled these institutions in order to establish a legal infrastructure for individual ownership, and so sale, of title deeds. But the indigenous built fabric and construction practices also posed material problems: *"Being essentially Yoruba, the unit of housing amongst the prosperous indigenes is the compound consisting of a group of compartments built around a rectangular open courtyard... The roof consists of roughly prepared palm fronds or bamboo over which a thick layer of mud was spread as a preventative against fires."*<sup>6</sup> (fig. 1). This 'black mud' troubled a Commission of Medical and Engineering Officers, who promptly outlawed it, declaring it injurious to health<sup>7</sup>. The problem of fire-prevention remained, though; according to contemporary reports in the *Observer*<sup>8</sup>, Lagos was the 'veritable fire-place' of West Africa, suffering at least two building fires every night. And more-over, the high cost of local construction materials hampered development; *"the greatest impediment to building with us is the difficulty of procuring material. Bricks are made here but some are bad and all far too expensive... badly sawn timber wood costs fully twice as much as building timber in England"*. In 1877 a particularly destructive fire, caused by wadding discharged from a pistol, destroyed a third of the island. It prompted the Lagos Town Council to enact its first By-Law as a means address this motley of policing, public safety, urban planning and economic concerns: it forbade the discharge of firearms or the letting-off of fire-works; demanded all buildings be built at a set distance from their property boundary to prevent spread of flame; granted police the power to demolish buildings that did not comply with this 'set-back'; outlawed the use of thatch as a building material; established corrugated iron as the mandatory fire-proof roofing material; and removed duty from the importation of this product, which was manufactured in Britain, but not Nigeria<sup>9</sup>.

Stepping back for a moment from the colorful detail of this story, a brief overview will offer us something akin to a legislative version of one of M.C. Esher's famous architectural illustrations; while there is a sense of logic and reason, the picture as a whole is riven with fundamental contradiction and aporia. The legal status of the treaty is, if course, the most obvious place to start. Precisely what rights Docemo did or did not cede on that day in 1861 is an issue which continues to be debated today, and whose full legal and political complexities we cannot recount here; but even to the casual observer, some structural problems present themselves. To construe Lagos as a lawful part of the British Commonwealth – the view upheld by judicial opinion thereon – requires a number of imaginative leaps. To recognise Docemo's signature as lawful we must first assume the alienation of land, via the White-Cap Chiefs, on to Docemo, of which no evidence exists. Secondly we must choose to ignore Docemo's later proclamation – more convincingly his own than that of the treaty – that he did *not* cede his territory to the Queen. Finally we must simply accept that Lagos was *already* the Queen's, if we are to recognise that proclamation as treasonous<sup>10</sup>. As this surfeit of contradictory logics break down into violence pure and simple, they suggest an inadvertent admission that, yes, the kettle was returned broken<sup>11</sup>.

Ironies of logic do not end there: There is a certain flair exhibited by an assurance that 'no injustice' be done to a deposed King on account of a promised pension, a pension withdrawn upon forced overthrow, an overthrow for which he is then charged costs. The concept of a 'free' trade structured by industrial regulations and preferential taxation agreements is, of course, its own story. But the circularities and reflexivities of legal thinking

that I wish to dwell on in this paper are the ones that this series of events and proclamations inscribe into the built fabric of contemporary Lagos.

Assuming a surprising sense of responsibility for an authority that had so recently fire-bombed the city, the first Lagos By-law – the ‘setback’ code - brings about a particularly subtle ruse. Ostensibly concerned with the health and safety of the populace, this rule rendered unlawful the existing physical fabric of a city whose legal status had already been undermined, at the same time as enrolling its urban re-development, its emergent building typologies, and its reformed construction practices and supply-chains into a political-economy of dependence. If this period in the history of Nigeria and the British Empire demonstrates some of the theoretical absurdities of discourses on Sovereign Right, the Lagos setback code would seem to mark the transition to a significantly different set of questions. It offers us a portrait in miniature, a caricature, a diagram of the processes through which the State monopoly on violence comes to be ‘governmentalised’<sup>12</sup>. From the vantage-point of a neo-liberalism which seeks to free the economic sphere from political interference, this story reminds us that we still need to be able to see rhetorically apolitical and technical phenomena such as building codes, and the marks they leave on the city, as a ‘continuation of war by other means’.

### **To See Like a City, or See like a State?**

Writing as I do from Edinburgh, it's easy to think of other moments when the built environment seems to directly embody the authority of law, and the violence it sublimates. Edinburgh's city walls both define and enforce the special status attributed to Scotland's Royal Burghs, the legal exceptions that carved them out of the underlying landscape of feudalism. The physical fact of the castle - around which the walls of the dense Old Town balloon – is a representation of the authority that underwrote that exceptionality, as well as the source of its capacity for violence. To think of Edinburgh's Old Town as such a legislato-physical hybrid is, according to many accounts, in-keeping with its contemporary govern-mentalities. Medieval European towns are said to have been understood as simultaneously legal and physical constructions; their spaces and buildings co-extensive with the forms of association they permitted, connected through the legal fiction of the ‘city corporation’, and the governmental concept of ‘town harmony’<sup>13</sup>. That is, a powerful relationship exists between the built fabric of cities and their legal frameworks; entering a settlement for the first time - as a freed serf, a young child, a migrant, a tourist - we experience it's spaces and buildings as if they were codes-of-conduct turned to stone. To construe the built environment of Edinburgh or Lagos as a kind of ‘lawscape’ – a direct physical corollary to its legal frameworks – is an easy imaginative leap<sup>14</sup>.

Historical accuracy or imaginary resonance aside, though, there is a risk of overstating such relationships; whilst the autonomy provided by thick walls, and the organizing conceit of harmony might have been useful for their burghers, neither made the medieval town an oasis of freedom or accord. In *Economy and Society*, for instance, Weber found the European medieval city remarkable because of its relative freedom from the threat of Sovereign violence, and the authority of Law, but this is precisely what made these settlements incubators for new and alternative modes of domination: In Weber's sociology, the concept of the ‘City’ – of densely settled, relatively bounded, impersonal and autonomous places - stands for the very possibility of a ‘non-legitimate domination’, for modes of authority that operate in parallel, in ignorance, or in open defiance of Sovereign rule. Weber's account is often drawn upon by contemporary literatures in Law and Geography studies. Gerald Krug's ‘Legal History of Cities’ offers a similar picture; the medieval town might have created a kind of physical and legal clearing, but this space was filled with internal forms of hierarchy and

struggle, splinterings of interests between nobility, crown, an emergent 'state', new class association and individual interests that would bring an end to this urban form, and give rise to the 'modern city'<sup>15</sup>. By seeing the built fabric of Lagos as an inscription of colonial politics does not necessarily assist us in understanding the *effect* of that inscription. The political life, legal frameworks and built fabric of a city are often out-of-joint, and by looking for correspondences between the two, we risk an obvious methodological trap: Gleaning traces of order from the wreckage of the city we construe the city as overly ordered, and blind ourselves to the what is occurring within it.

In the literatures on Law and Geography this conceptual risk is sometimes referred to through the concept of 'Seeing like a State'. Coined by James C. Scott in his book of the same title, the term identifies a range of reasons as to why well intentioned governmental and urban planning initiatives tend to fail<sup>16</sup>. Scott suggests that architects, planners and governments tend to do violence to local and practical modes of organization, precisely on account of this optical pre-disposition; construing the urban as a realm to be ordered in the mind, understanding it only through their own tools for intervention, architect-governors are pre-disposed to ignore what is actually happening 'on the ground'. The term has generated a wider discourse, and has developed an application to forms of theoretical, as well as governmental, practice. In 'Seeing Like a State, Seeing Like a City', Warren Magnusson appropriates it to describe a perceived state-centricity within political theory. Again thanks to a tendency to assume the subject-position of architect/governor, he suggests that political theorists are pre-disposed to assume the necessity of the State, and so assume that defining and securing concepts of Sovereignty is their important theoretical task. Extending Scott's usage, Magnusson employs the notion of Seeing Like a State to describe a kind of circular economy, a mutual self-legitimization, that occurs between the activity of political theorists and those of urban governors; understanding the city only through top-down attempts to order it, the theoretical aporia of sovereignty are papered over by a normative leap; The State is all around us, written in to the bricks-and-mortar of our institutions, and so appears practically necessary<sup>17</sup>. With the Lagos set-back code in mind, it is easy to sympathise with the binary and oppositional logic of both Scott and Magnusson; the activity of urban legislators can often seem to impose utopian requirements that are ignorant of, or do violence to, everyday urban practices, undertaking self-legitimizing exercises that appear designed to maintain the Sovereign as a spectre of political violence.

Magnusson uses Weber's account of the special sociological character of the city as a means to sketch an alternative concept of politics, one which abandons the subject-position of the planner, and takes the messy compromise of urban life as its paradigm. Within Magnusson's work, politics is construed as the process through which assertions of Sovereignty are ignored, contested, or actively defied. Like Weber, he suggests that it is in the practicalities of urban co-habitation – bounded, closely settled, relatively impersonal – that we see 'legitimate' modes of dominance – Law, Tradition and Charismatic leaders – come to be resisted, in such a way as to allow multiple overlapping and competing authority claims to co-exist side-by-side. Dubbing this programme 'Seeing Like A City', Magnusson valorizes those moments in which the rationalities of law comes to be suspended, subject to compromise, arguing that questions of Sovereignty should be understood not so much as the 'first mention' of politics, but rather its 'McGuffin'<sup>18</sup>:

*To use Schmittian language, sovereignty is the exception that is postponed, evaded, deflected, subverted, and ultimately transfigured... The sovereign promises to repel the invading army or to suppress the riots; the sovereign expects obedience in return. But, this bargain – which is not really a bargain, since people have no choice*

*but to accept it – is just a moment in the re-organization of the city. Ultimately, the sovereign and the sovereign's pretensions are incorporated as another element in the life of the city. The sovereign is not the rock on which the city is built, but part of the rubble that the city transforms into reinforced concrete... For the city to flourish, sovereign authority must be transformed into the exception that proves the rule.*<sup>19</sup>

The work of Marianna Valverde offers a rich range of practical examples that would seem to support Magnusson's theoretical programme. Valverde is professor of criminology and sociology at the University of Toronto, and her research demonstrates, amongst other things, the way in which the exceptionalities inherent in law are recycled and redirected through application. In 'Seeing Like a City: The Dialectics of Modern and Premodern Ways of Seeing in Urban Governance' she demonstrates the polyvalency of legal exceptions through the landmark case *Village of Euclid v. Rambler Realty*. She shows how this ruling – which establishes the power and limitations of US Zoning Ordinance - effectively decided both *for* and *against* the possibility of comprehensive urban regulations in the US. The possibility of such 'socialist' requirements were only defended through the incorporation of a range of generous legal exceptions, 'structural contingencies' designed to limit state sovereignty<sup>20</sup>. Focussing on the divergence between Utopian aims and concrete effects, her work demonstrates that governmental initiatives which might seem examples of 'seeing like a state', often generate modes of suspension that accommodate and support alternative viewpoints.

This paper contributes to the discourse on urban governance, offering the Lagos setback code as an example of such politically ambivalent legislation. Having situated it in its original political context, the remainder considers the way it has been absorbed into the city, coming to be both politically and physically re-appropriated through use. Following Valverde's example, it takes care not to conflate governmental *intentions* with their *effects*. Looking beyond the politics of cession, and into the practicalities of its current application, it attempts to show how the set-back code has created a physical and legislative space that has accommodated a wide range of divergent urban initiatives.

### **Authority in Suspense / Authority in Dilapidation**

*Let me tell you what interests me in the [Setback] rule. When I travelled, when I went through to European cities, I asked myself, why do these big cities look so expansive? Its because they don't have fences! You can actually walk to the doorstep because they don't have fences. In Lagos you know we are all fenced in and the roads set back...*<sup>21</sup>

The set-back code is, as this comment by Tunji Odunlami, Director of Physical Planning and Development at the Lagos State Secretariat suggests, one of the most significant factors in the development of the city's current urban form and its patterns of use. Defined today by Lagos State Physical Planning and Development Regulation 15, it sets out the minimum distance that any development must maintain between building and plot boundary (fig. 4). This ranges from 3 to 9 metres in depth, excluding balconies, and as such constrains the possible relation of building to street, as well as circumscribing the buildable area, and development economics, of any plot. In form, its effect is to define Lagos as an essentially sub-urban settlement, it being illegal to build either to the street, or to adjacent properties (the basic formal arrangement, incidentally, that Weber suggests creates the special social conditions of the 'City'). As we have noted, the rule effectively outlawed both the indigenous Yoruba courtyard pattern, but also the euro-phillic urbanism that pre-dated British

settlement, arriving via re-patriated Portuguese slaves. Following the model of the British settlement in Ikoyi, it has channelled urban development in Lagos through the paradigm of a house in gardens (fig. 5). In terms of use, it categorises the set-back zone – which includes the street frontage of every building in the city – as non-developable, structured only by the ‘fence’ and the ‘ditch’, the cities ubiquitous security and drainage infrastructures.

Its effect in practice, however, is somewhat different; Lagos is neither a garden city, nor do its street frontages want for activity. This legally undevelopable zone is, as one might expect, the most programmatically and economically dynamic part of the city. Behind the fence, the space is used for all manner of adjunct facilities to the main property: security posts, guards houses, servants-quarters, generators, diesel storage-tanks, utility buildings, even the mixed-use residential-commercial villages (‘mammy markets’) that surround the workplaces of poorly paid civil servants. On the street side, it accommodates any more-or-less ‘non-legitimate’ economic or cultural activity; the kiosks in which everyday untaxed trade occurs, the vulcanizing stations of the cities infamous car-mechanics, its gin-distilleries, its ‘mendicants’, its Mosques (fig. 6).

Needless to say, this concrete divergence from rational intent makes the rule highly counterproductive. Intended to create an urban network of fire-breaks, its effect is to distribute people, activities, materials, and buildings in such a way as to maximize their inflammatory potential. One might ask how, then, it’s continued requirement, and non-enforcement, is justified? To some degree, it simply isn’t; the rule has become so absorbed within the city as to have become detached from its rationale. The building regulations do not state its purpose, nor are they in wide circulation amongst either architects or lawyers; the requirements of the code are known to building occupants and designers because they are written into the neighbouring plots (that is, In Weberian terms, they have been naturalised into a ‘Traditional’ form of authority, a way of doing things that no longer requires explicit justification). But if it’s purpose is not explicitly stated by government, nor brought to mind by the governed, that does not make it purposeless: *“Gunpowder and thatched roofs, they are not friends you know. They go up in flames. Yes, the setback rule evolved from British regulations, from colonial times, as a means of stopping spread of flame. However, I don’t think that is what it is about today. The setback, for all terms and purpose, does not belong to you. Before the setback, that bit of property does not really belong to you. It is an easement, the government can take it back at any time, for road widening for instance. It doesn’t say this in any laws, but I make a deduction; that’s why you can’t build your main building there, but also why there is a relaxation on the kind of structures that can be built in this space. You can put up temporary structures there, and we don’t hound you”*<sup>22</sup>. That is, this ostensibly governmental measure, derived from the distance a spark might fly and set light to thatch, is understood today - as perhaps it was initially intended- as a means of legitimating the state cession of land. Its side effects, or collateral benefits, have become its tacit purpose.

If we were to leave it here, this story could be read as an historical ruse of the most un-enlightening sort; a disingenuous and counterproductive rule, that would seem to do nothing but legitimate either the fact or threat of appropriation. But following Magnusson, that would be to mistake the MacGuffin for the story proper. Lagos has been through a number of transformation between 1861 and today, and the setback zone has been an important device in facilitating that transformation. The legal and physical fact of the code has been occupied in a wide range of ways, appropriated by its occupants, but also re-conceived and re-articulated by the state itself. This is not an unusual characteristic of Nigerian legislation, much of which was imported by the British. Until independence in 1960, all Nigerian planning laws and building regulations were based on British models, and the



primary legislation remains that of the 1932 Town and Country Planning Act, adopted in 1946. However, these rules have been through significant processes of modification, being edited and re-purposed to the local environmental and political exigencies. The setback, for instance, was reconceived in the early 1900's, when the Lagos Executive Development Board (LEBD) was set up to respond to an outbreak of bubonic plague. It established restrictions on the density and height of buildings, re-formulating the setback as a proportional *cordon sanitaire*, expressed through the requirement that no part of the building should extend in front of an imaginary line at 60 degrees to the boundary. It was at this time that the exception concerning balconies was introduced, incentivizing a new vernacular deemed beneficial to health. While legitimating clearance and reconstruction in the slums, this rule also facilitated a general densification elsewhere, with schemes such as Idumagbo Avenue (fig. 3) acting as models. In 1946, carried by the Town and Country Planning Act, Ebenezer Howard's Garden City movement arrived in Lagos. The suburban spatiality of Ikoyi, the original British settlement, was rediscovered as a nascent Garden Suburb. Its plan, taken as a native equivalent of Welwyn, informed Lagos planning in the 1940s-60s, a period during which the set-back code was again re-written, re-establishing a minimum setback so as to de-densifying patterns of expansion and reinforce the fenced house-in-garden pattern. At this time, *'not more than 50% of the site should be covered for residential purposes, or 70% for other uses, and that an air space of 5'6" be left round a single storey building other than a 3'-6" boundary wall in front of the building line'*<sup>23</sup>. Today, with Nigeria in the midst of implementing its first national building code, the setback offers a new potential, as an infrastructure of passive ventilation. Lagos State requires all rooms to be provided with cross- or adjacent-ventilation (an environmental requirement that would be both unthinkable and impractical in built fabrics that have developed from the European medieval city) something that is achievable because all buildings are already provided with air-space to all sides. That is, while disguising a range of tacit governmental ploys, the history of the Lagos Setback might also be seen to offer something of an enlightenment process. The processes of transformation described above are not simply applications of state violence, but rather a process of governmentalisation, one through which the State seeks to continually re-rationalize its authority. In so doing it develops a reflexive awareness of both the limits, and the unintended side-effects, of its governmental technologies.

However, if we were to offer a critique of this particular rule – and in so doing try to add something to the discourse on 'Seeing like a City' – it might be to suggest that the legal/physical exchanges described by these transformation have not been sufficiently concretized. The set-back law and its tacit exceptions offer an example of the *suspension* of law that Magnusson's 'Seeing Like A City' recognizes as necessary, but this suspension itself is not enough to facilitate any real transformation, in law, or the city. The modes of non-legitimate occupation that it supports are tolerated only on account of the threat of imminent state cession; they have yet assume any kind of legal status, or to have any reciprocal effect on the law. The effect that this legal suspension creates in contemporary Lagos is that of a *dillapidtion* of authority, both literally and metaphorically. The 'mammy markets' that surround the modernist institutions of Lagos – its police headquarters, barracks, or secretariat – offer a Kafkaesque picture of these institutions, announcing their inability to deliver bureaucratic impersonality or impartiality. This is not accidental; the dis-repair of Lagos's streets and public institutions is that of an informality *designed* by regulation. But the code also contributes to a kind of dis-repair within law itself; unable to announce its explicit purpose, since this is manifestly counterproductive, the authority of Law is here reduced to Tradition. That is, the state of legal suspension created by the code seems to provide both real and imaginary evidence of a collapse in the rational ordering capabilities of city and government, one which leaves the threat of violence under the thinnest veil.

That is, the suspension of Law is not in itself sufficient to effect an evasion, deflection or subversion of Sovereignty, indeed it is simply another gesture of Sovereignty. What this example suggests, paradoxically, is that Laws potential for transfiguration depends upon its becoming concretely materialized; It was only on account of its being built into the fabric of Lagos that the set-back code came to accommodate such a wide range of competing governmental rationalities, and everyday appropriations. To conclude, then, this paper turns its attention to those moments of *materialisation* which occur between Law and City, and to the ambivalent potential that is brought to Law by its technological delegates.

## The Texture of Law

The concern outlined by the concept of 'Seeing Like A State' – that urban legislators and theorists become caught up within the terms of their own discourse, and blind themselves to the effects of urban legislative action – is one shared by scholars in the emerging field of Infrastructure Studies. Through studies of the ordering effects of dispersed and embedded governmental technologies - from telecommunications networks to legal standards – authors such as Geoffrey Bowker, Susan Leigh Star and Martha Lampland, or Vaughan Higgins, Simon Kitto, and Wendy Lerner<sup>24</sup> likewise draw our attention to the need to distinguish between the intents and effects of governmental initiatives, between their 'governmental rationalities' and 'governmental technologies'. Drawing on the language of Actor Network Theory they remind us that, in order to take effect in the world, governmental initiatives must be materialized in one form or another. Rationalities do not act alone, but require technical 'delegates'; fiber-optic cables, law-courts, pieces of paper, drawings, buildings. Such delegates are never transparent representatives, but come with their own material 'actancy', representing some concerns better than other, and always remaining open to being re-directed to uses other than those originally intended. In 'Sorting Things out : Classification and Its Consequences' Bowker and Star develop a number of methodological themes which are suggestive of ways to trace the process through which urban legislative measures come to be subverted, deflected, evaded and transfigured<sup>25</sup>: They show us that different forms of legislation have their own specific 'texture' - paths of greater or lesser resistance – which tend to be best known to those who work with them on the ground; that while legislative frameworks aspire to universality, they also produce blind-spots and exceptions, and so construct residual 'others'; that while they aim to solve specified problems, they often produce new problems, and so new rationales for government, leading to 'cumulative mess-trajectories'; that standards and codes are never built 'de novo', but are themselves produced through the imaginative re-direction of historical legal and physical infrastructures; and that the practical politics of legislation is a question of 'visibility' – in whose interest is it that a specific social or practice become subject to governmental scrutiny? Bowker and Stars themes offer broad lines of enquiry for an architectural humanities concerned with the politics of urban regulation and standardization. Here I use them, though, to offer a final reflection on the *materiality* of the Lagos setback code, considering the ways in which this has steered both its historic transformation, but also its future potential.

We have seen that the governmental *rationale* of the Lagos setback concerns the problem of fire. Its effect on the city has been defined less by this original intent, though, more by the material character of its technical delegate. The code took the form of a spatial easement, and it is this spatial character that allowed it to be reconceived and re-appropriated in the ways that it has been; as a garden, a cordon sanitaire, a passive ventilator, a guard-house, a garage or a mosque. The governmental value of the code today is not its having effectively reduced rates of fire-spread, but its providing legally ceaseable land for the purpose of road widening; Lagos State today considers "*the retention of the provision for*

*setback zones in the statute is critical to maintaining the stability of the State's economy*"<sup>26</sup>. In a city beset with notorious 'Go-Slows' (areas of perpetual gridlock) infrastructure expansion – especially road-widening – is a significant governmental problem. The setback is being used today as a means not only for road-widening, but also as a location for other infrastructure projects such as bus-stops and depots, for example. The ways in which the code has failed are on account of its spatial grain, also; an ordinance that set out to make the street-frontages of a city undevelopable would be un-policeable in practice, and is only tenable on account of its effective non-enforcement.

The setback, then, has provided the legal and material substrate for a kind of historic inventiveness on the part of both the cities occupants and the State's planners, but what space for imagination does it create today? Its principal governmental value today is as an instrument through which the State can revoke private occupancy of land toward 'public purpose', a concept around which there is much legal discussion. The Nigerian State is empowered to cease private land for almost any conceivable purpose, including gifting it to other private individuals or companies, though this is being contested (see *Oviawe v. Integrated Rubber Products LTD*). But what future public concerns might emerge to legitimate its future cession? Besides traffic, another major concern is flooding. Much of Lagos lies below sea level, but the city lacks a sewage system, or a storm-water drainage infrastructure beyond that of the 'ditch'. The setback creates an easement along which other conventional urban infrastructures, such as sewers, might be installed, but the sub-urban spatiality it has created also suggests other possibilities. The setback itself offers a combined footprint that might operate together as an urban-scale 'soak away'.

The forms of historical imagination that such infrastructures provide, though, comes at the risk of black-boxing ignorance, built as they are on conceit and past assumption. These risks become manifest when the effects of an infrastructure differ dramatically from their stated intents, causing iterative additional governmental problems. The Lagos setback would seem to offer an example of just such a 'mess trajectory'; a fire-safety measure which has generated a fire-safety problem. At what time and in what circumstances might the setback itself come to be problematized, and what new governmental actions might appear as a reasonable response? Perhaps the most likely source of contestation in the immediate future would be the economic limits the code is imposing on building development. Limits to foreign investment for Naira-based investment funds are currently leading to a sharp rise in local land and property development. The development ceiling for plots in Lagos are set by a combination of factors; maximum eaves heights, car-parking provision and setback. Given that the *proportion* of a site given over to setback reduces with plot *size*, the code is reinforcing a pattern of plot bundling, and making small plots undevelopable. A private challenge as to the effectiveness of the setback might open up new development opportunities; its supposed performance requirement (limit to spread of flame) could be met by more spatially-economic means.

The setback is also exemplary of the way in which urban ordering devices can lead to their own kinds of dis-order, by constructing specific residues and exceptions. Indeed, we could well say that it functions as a kind of 'othering' device. If we were to try to describe the land-use of this zone, for instance, we would need to develop categorical logics suited to Borges *Chinese Encyclopedia*<sup>27</sup>; the zone brings together 'private buildings less-high-than-a-fence', as well as 'economic and social facilities for the part-with-no-part'. That is, we might see the set-back as a spatial and social condenser of 'non-legitimate' modes of association and domination – a moment of the medieval in Weber's sense. What new forms of organization and association might its dense cohabitation incubate? Nigerian law does

recognize 'squatters rights' for instance; it is conceivable that, through settling and occupying the zone, some of its tenants might become recognized as 'legitimate'. That is, this mechanism of state-cession, cutting through both tribal and private ownership, might create a path toward direct occupation for its current motley of inhabitants.

Finally, we have seen that a politics of visibility is at work in the Lagos set-back code; the state 'turns a blind eye' to what is occurring within the zone, due to the fact that the informality of use holds the space open for future appropriation. In a country in which 80% of taxable individuals remain outside the tax net, this attitude might be construed of as realist, perhaps even 'cosmopolitan'. Given that the states capacity for action is limited, its spatial and legal structures must be able to accommodate the 'others' that they produce. If the street-fronts of Lagos are reconceived through a future governmental rationale, what will become of these 'blind-spots'? How will a revised strategy to mitigate fire-spread, a widened street, an improved public-transport infrastructure, a sustainable urban drainage scheme, or a more profitable pattern of settlement accommodate the peoples, activities and functions which currently occupy this legal shadow? For those thinking about and designing the future of this zone, the practical political question posed is whether or not they might be better off left 'in the dark'?

We're familiar with the notion that rules are there to be interpreted; no law could contain within itself all the guidelines for its own application, a moment which calls for situated judgement. Debates over the Judicial Interpretation of the US constitution testify to this ambiguity; differing legal interpretations can be reached depending upon whether we choose to follow the 'letter of the law', or to divine the spirit of its intent. That is, we know Law to be discursively mutable, open to corruption, dependent as it is on the abstraction of language. This paper, however, has attempted to draw attention to a different aspect of the corruption of law, through a focus on its *material* transformation. In order to take effect, law must be inscribed into our social practice and material world through specific technical delegates, delegates which bring with them their own capacity for re-direction. Its purpose in doing so has not been to critique this corruption, but rather – following Magnusson and Valverdhe – to describe such transformation as a necessary part of the process through which expressions of Sovereignty come to be absorbed within the practical politics of urban life. Seen in the context of its initial application, the Lagos setback code appeared emblematic of the blindness and violence that Scott and Magnusson call 'Seeing Like a State'; viewed in terms of its historical transformations and future potentiality, it might be seen to have allowed the city to accommodate and learn from a wide range of governmental rationales, the interests of a broad cross-section of urban actors, and a number of different material phenomena. If it can contribute to such discourses on Urban Governance, it does so by suggesting that they might learn from Infrastructure Studies when studying the way in which the city mediates and transforms its legal frameworks. Borrowing again from the terminology of Susan Leigh Star we could say that the city is not the inscription of law, but rather its 'Boundary Object'; the common referent – physically stable but interpretatively flexible – that allows a multitude of actors to co-operate without consensus. While the specific story of the Lagos setback is not short of duplicity and naivety, the papers nonetheless tries to retrieve from it a kind of reflexive intelligence, one which pays more attention to the side-effects than it does to statement of intent. If architects, planners or legislators have something to learn from this intelligence, it is that as we design legal and material structures to the needs of the present, we are mindful of their openness to discursive and material transformation.

Acknowledgements:

*Omitted for Anonymity*

Figure Captions:

1. Pre 1861: Yoruba Courtyard Pattern
2. 1861: Government House / British Colonial Settlement Pattern
3. 1930s: LEDB Anti-plague rebuilding pattern
4. LSPD Regulation 15: Permissible Setbacks
5. Lagos 1960: Portugese inspired urbanism of Lagos Island (left) contrasted with sub-urban British settlement pattern in Ikoyi (right).
6. Fence, Setback and Mosque: Video stills, street-frontage Lagos Island.

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<sup>1</sup> *Nigeria Under British Rule*, 1 edition (London: Routledge, 1965) p. 24.

<sup>2</sup> Michael J. C. Echeruo, *Victorian Lagos: Aspects of Nineteenth Century Lagos Life* (Macmillan, 1977), p.17.

<sup>3</sup> Taslim Olawale Elias and Nigeria, *Nigerian Land Law and Custom* (Routledge & K. Paul, 1951) p. 7.

<sup>4</sup> Michael J. C. Echeruo, *Victorian Lagos: Aspects of Nineteenth Century Lagos Life* (Macmillan, 1977), p. 17.

<sup>5</sup> Echeruo, *Victorian Lagos*, p. 18

<sup>6</sup> Kunle Akinsemoyin and Alan Vaughan-Richards, *Building Lagos*, 1976 Prestige, p. 7

<sup>7</sup> Echeruo, *Victorian Lagos*, p. 20.

<sup>8</sup> Echeruo, *Victorian Lagos* p 19.

<sup>9</sup> Kunle Akinsemoyin and Alan Vaughan-Richards, *Building Lagos*, 1976 Prestige, p. 35-38

<sup>10</sup> For an outline of contrasting contemporary interpretations, see Elias and Nigeria, *Nigerian Land Law and Custom*.

<sup>11</sup> In the joke, recounted by Freud, and also enjoyed by Zizek, a man who is accused by his neighbour of having returned a kettle in a damaged condition offers three arguments; That he had returned the kettle undamaged; That it was already damaged when he borrowed it; That he had never borrowed it in the first place. See Sigmund Freud, *Jokes and Their Relation to the Unconscious* (Norton, 1989), p. 206.

<sup>12</sup> I am here using the term in the sense Foucault's genealogy of political liberalism, developing from concerns over Sovereign Right and its recognition of the force of the market in the 16<sup>th</sup> C. through to contemporary concerns over security, economics and population management in the 20<sup>th</sup>. The period 1861-63 in Lagos condenses this long history, and marks a moment of transition in which assertions of sovereignty give way to a more 'governmental' logic, based on the states responsibility for the health and safety of a population. See Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979: Lectures at the College De France, 1978-1979*, trans. Mr Graham Burchell (Palgrave Macmillan, 2010).

<sup>13</sup> See Gerald Frug's brief genealogy of European urban legal history 'A Legal History of Cities', pp 154-176, Chapter 13, in Nicholas Blomley, David Delaney, and Richard T. Ford, *The Legal Geographies Reader: Law, Power and Space*, 1 edition (Oxford, UK ; Malden, Mass: Wiley-Blackwell, 2001).

<sup>14</sup> Philippopoulos-Mihalopoul's concept of *lawscape* is intended to describe just such an 'incestuous intimacy' and Blomley, Delaney and Ford's introduction describes a similar phenomenon. See Andreas Philippopoulos-Mihalopoul, *Law And the City* (Routledge, 2007); Blomley, Delaney, and Ford, *The Legal Geographies Reader*.

<sup>15</sup> Blomley, Delaney, and Ford, *The Legal Geographies Reader*. pp 154-176

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<sup>16</sup> James C. Scott, *Seeing like a State : How Certain Schemes to Improve the Human Condition Have Failed* / James C. Scott, Yale Agrarian Studies (New Haven, Conn. ; London : Yale University Press, [1998], ©1998., 1998).

<sup>17</sup> Warren Magnusson, 'Seeing Like a State, Seeing Like a City' (Annual Meeting of the Canadian Political Science Association, Vancouver, 2008), <http://www.cpsa-acsp.ca/papers-2008/Magnusson.pdf>.

<sup>18</sup> A MacGuffin is a Hitchcockian motif, an empty pretext with which to begin a story: "Two gentlemen meet on a train, and the one is struck by the extraordinary package being carried by the other. He asks his companion, 'What is in that unusual package you are carrying there?' The other man replies, 'That is a MacGuffin.' 'What is a MacGuffin?' asks the first. The second says, 'A MacGuffin is a device used for killing leopards in the Scottish highlands.' Naturally the first man says, 'But there are no leopards in the Scottish highlands.' 'Well,' says the second, 'then that's not a MacGuffin, is it?'" See Slavoj Žižek's *The Iraqi MacGuffin, and Everything You Always Wanted to Know about Lacan: (but Were Afraid to Ask Hitchcock)* (Verso, 1992).

<sup>19</sup> Magnusson, 'Seeing Like a State, Seeing Like a City.'

<sup>20</sup> Mariana Valverde, 'Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance', *Law & Society Review* 45, no. 2 (1 June 2011): 277–312, doi:10.1111/j.1540-5893.2011.00441.x.

<sup>21</sup> Self-reference omitted for anonymity

<sup>22</sup> Self-reference omitted for anonymity

<sup>23</sup> Kunle Akinsemoyin and Alan Vaughan-Richards, *Building Lagos*, 1976 Prestige, p. 59.

<sup>24</sup> In 'Calculating the Social, Higgins, Kitto and Larner offer an interesting overview of what they see as the limits of Foucauldian studies of 'Governmentality', and the value that ANT offers to this topic. They suggest that Foucault's pre-disposition to the discursive; always focussing on the *statement* of intent, leads his studies to conceive governmental initiatives as overly coherent and univocal, missing their historical contingencies and unintended side-effects. The framework of ANT, concerned with the difficulty of enrolling technologies within specific rationalities, offers concepts and themes to direct us to the perfidy of stuff. Vaughan Higgins, Simon Kitto, and Wendy Larner, *Calculating the Social: Standards and the Reconfiguration of Governing* (Palgrave Macmillan, 2010).

<sup>25</sup> These terms are taken from Bowker and Star in 'Sorting Things Out'. The two authors offer a list of methodological themes for their research methodology, which they dud 'Infrastructural Inversion'. Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things out : Classification and Its Consequences* / Geoffrey C. Bowker, Susan Leigh Star, Inside Technology (Cambridge, Mass. ; London : MIT Press, [1999], ©1999., 1999).

<sup>26</sup> I am quoting here from an unpublished report prepared at the request of the author by Akeem Kolawole of Oluwakemi Balogun and Co., Legal Practitioners and Notaries Public, Lagos. This report also informs my concluding reflections on the legal status of the setback and recent challenges to its use. My thanks to Akeem, Kemi, and Ola Oduku, for their assistance here.

<sup>27</sup> This famous passage from Borges - which illustrates the irrationality possible within the rational of categorical logic – provides the humorous opening to Foucault's *The Order of Things*. Likewise, Foucault's laughter is the prompt behind Bowker and Star's interrogation of categories as a cognitive 'infrastructure'. Following this trajectory, I offer the concrete effects of legislation as another example of an unwitting satire caused by processes of enlightenment. See Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Vintage Books, 1970).